Supreme Court, U.S.
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NO. _____

In The

Supreme Court of the United States

Spring Term, 1993

KENDALL STOCKSTILL,

Petitioner,

V.

SHELL OIL COMPANY,

Respondent,

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether the qualified privilege allowed under Louisiana law to an entity in making disclosures about an employee in an investigatory situation to a governmental agency extends this privilege to the entity and its other agents when the only other agent making the statements could be presumed to be in good faith and who had relied upon a file put together by other agents in a manner showing a careless disregard for the truth of the matter being disclosed.

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following parties have an interest in the outcome of this proceeding.

Kendall Stockstill	-Petitioner
Shell Oil Company	-Respondent

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OPINIONS AND REPORTS

The opinion of the Court of Appeals for the Fifth Circuit has been reported at 3 F. 3d 868.

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on September 27, 1993. The United States Court of Appeals for the Fifth Circuit's denial of rehearing was rendered on October 28, 1993. Therefore, the

jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254 (1).

STATUTE AND REGULATIONS INVOLVED

28 U.S.C. Section 1254 (1)

STATEMENT OF THE CASE

On September 11, 1990, Kendall Stockstill, a joint employee of Shell Oil Company (Shell) and Coastline Construction Company (Coastline), filed an age discrimination complaint against Shell and Coastline, Thereafter, another joint employee of Shell and Coastline, Manuel T. Mayeaux, filed a similar complaint. These cases were consolidated April 22, 1991.

Stockstill, while working in Alaska, was informed by personnel from the Equal Employment Opportunity Commission (EEOC) that Shell believed he had been involved in a sexual harassment case. He could not comprehend this and considered the actions taken against him a mistake. Discovery was taken from Shell in the ADEA case, and it was in these documents from Shell that he first became aware of the nature and magnitude of the charge that Shell had made to the (EEOC) regarding his alleged actions toward a female employee of Shell. It was at that time also, that the identity of the alleged victim, Barbara Jean (B. J.) Holcombe even to him. Stockstill therefore filed a partition for defamation in the Civil District Court for the Parish of Orleans, State of Louisiana, on June 24, 1991.

On July 11, 1991, Shell filed its notice for removal and subsequently filed a motion for consolidation with the previous cases on July 17, 1991. The trial Judge granted Shell's motion and the removed case was consolidated on July 25, 1991.

The complaints for age discrimination were dismissed on November 7, 1991 upon Shell and Coastline's Motion for Summary Judgment. Thereafter, only Stockstill's claim of defamation remained before the District Court. Shell then moved, on September 17, 1991, for summary judgment on his defamation claim. This motion was denied on October 9. 1991. Shell then filed an Amended Motion for Summary Judgment on March 24, 1992 which was likewise denied on April 8, 1992.

After a jury trial on April 13 and 14, 1992, the trial Judge granted Shell's Motion For Judgment As a Matter of Law. Judgment was accordingly entered that same day, dismissing with prejudice Stockstill's defamation claim.

Kendall Stockstill timely filed his Notice of Appeal on May 5, 1992. On September 27, 1993, after oral argument on June 8, 1993, the Fifth Circuit Court of Appeals rendered a judgment affirming the lower courts findings. A re-hearing was denied by the United States Court of Appeals for the Fifth Circuit on October 28, 1993. In App.

ARGUMENT

In Toomer v. Breaux, 146 So. 2d 723 (La. App. 3d Cir. 1962) the court defined the scope of a qualified or conditional privilege in the State of Louisiana. This court found that "[A] publication enjoys a "qualified" or conditional privilege if the communication is made (a) in good faith, (b) on any subject matter in which the person communicating has a interest or in reference to which he has a duty, (c) to a person having corresponding interest or duty. This privilege arises from the social necessity of permitting full and unrestricted communication concerning a matter in which the parties have an interest or duty, without inhibiting free communication in such instances by the fear that the communicating party will be held liable in damages if the good faith communication

later turns out to be inaccurate.

In affirming the District Court's ruling, the Appellate Court found that Shell Oil Company (Shell) was entitled to a qualified privilege under Louisiana Law. This decision was based primarily upon the alleged good faith of Ms. R. Ann Ford, the Shell employee responsible for disseminating information to an agency, in this case the Equal Employment Opportunity Commission (EEOC). The Appellate Count found that since Ms. Ford had not participated in the investigation then she acted without malice when she opened petitioner's personnel file and made her report to the EEOC. Therefore, her statements were entitled to a qualified privilege. Since Ms. Ford was an agent for Shell, this qualified privilege extended to the entity as well.

This ruling by the Appellate Court has placed an unheard of burden upon the American worker and given carte blanche to any employer which merely establishes a "personnel department" behind which to hide.

The Appellate Court totally disregarded Shell's responsibility and duty towards its employees. An entity must bear the responsibility for any and all information going into the worker's personnel file, since there always exists the possibility that the information contained within will someday have to be disseminated as in the case at bar. The petitioner agrees that an entity should have the right to disseminate information to a governmental agency in an employment investigation without fear of reprisal. This right must be used with malice towards none and an absolute regard for the truth. A mistake or an error is almost certain in cases concerning an entity as large as Shell. The mistake or error should not be used to condemn an entity, and a mistake or error is not the problem in this case.

Under Louisiana law malice must be proved either by the knowledge of the falsity of the statement made or by a reckless disregard for the truth. The evidence in this case

shows there was a reckless disregard for the truth. This careless disregard for the truth is shown by (1) the length of the investigation, (2) the discrepancy between the number of persons alleged to have been interviewed and actually interviewed, (3) the deliberate failure to interview the victim and (4) the deliberate failure to interview the petitioner. The evidence shows that Shell could not have exercised due diligence in it's investigation. Shell stipulated that the petitioner was dismissed on September 12, 1988 and not on October 3, 1988 as Shell later contended. The only person to accuse the petitioner was interviewed by Shell on September 8, 1988, just four (4) days prior to petitioner's dismissal. Thus, it was impossible for Shell to speak with the 45-50 people it claims to have interviewed.

Shell based its termination of petitioner on his alleged acts of inappropriate conduct of a sexual nature against Barbara Jean Holcombe. Barbara Jean Holcombe stated on the stand and in an affidavit that the petitioner had never sexually harassed her. Though the language that was used between them could be interpreted by some as inappropriate, it was commonplace and acceptable among all employees.

The Appellate Court has ruled that when an agent making allegedly defamatory statements relies on a file that has been put together by others with a careless or reckless disregard for the truth of the matters contained within, she acts in good faith. However, this ruling is contrary to all principles of agency law. When a taxpayer hires an accountant to do his tax returns, the accountant relies upon the information given to him by the client. If the information is false or incorrect, the accountant's good faith in compiling the return does not extend to the taxpayer and protect him from the Internal Revenue Service. Therefore, the granting of qualified privilege to Ms. Ford should not be extended to Shell.

CONCLUSION

For all the above and foregoing reasons this Court should grant Certiorari hear, decide and redefine the limits of qualified privilege as stated by Louisiana law.

Respectfully submitted,

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IN THE UNITED STATES OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3415

KENDALL STOCKSTILL,

Plaintiff-Appellant,
Cross-Appellee.

versus

SHELL OIL COMPANY,

Defendant-Appellee,
Cross-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana

ON PETITION FOR REHEARING

(October 28, 1993)

Before E. GARZA and DEMOSS, Circuit Judges, and ZAGEL, District Judge. *

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* District Judge of the Northern District of Illinois sitting by designation.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause bee and the same is hereby DENIED; THE MOTION TO SUBSTITUTE COUNSEL IS GRANTED.

ENTERED FOR THE COURT:

EMILIO M. GARZA
United States Circuit Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3415

KENDALL STOCKSTILL,

Plaintiff-Appellant
Cross-Appellee,

versus

SHELL OIL COMPANY,

Defendant-Appellee
Cross-Appellant.

Appeall for the United States District Court for the
Eastern District of Louisiana

Before EMILIO M. GARZA and DeMOSS, Circuit Judges, and ZAGEL, District Judge.

Zagel, District Judge.

PER CURIAM:

The Judgement of the District court is **AFFIRMED.**

(The eleven page judgment is recorded at 3 F. 3d 868.)